

ASSEMBLY BILL

No. 1754

Introduced by Assembly Member Havice

February 4, 1998

An act to amend Sections 1048.1 and 1050 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1754, as introduced, Havice. Criminal procedure: trial date: continuance of proceeding.

Existing law requires that in scheduling a trial date at an arraignment in superior court involving an alleged sexual assault offense, or an alleged child abuse offense, reasonable efforts be made to avoid setting that trial, as assigned to a particular prosecuting attorney, on the same day that another trial is set involving the same prosecuting attorney. Existing law likewise specifies the procedures by which a motion to continue any hearing in a criminal proceeding, including the trial, may be made. Continuances may be granted only upon a showing of good cause, which includes, but is not limited to, cases involving allegations of sexual assault or child abuse where the prosecuting attorney assigned to the case has another criminal proceeding in progress in that or another court.

This bill would add murder, as defined, to the offenses considered in scheduling a trial date and those cases constituting good cause for a continuance.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1048.1 of the Penal Code is
2 amended to read:

3 1048.1. In scheduling a trial date at an arraignment in
4 superior court involving *murder, as defined in*
5 *subdivision (a) of Section 187*, an alleged sexual assault
6 offense, as described in subdivisions (a) and (b) of
7 Section 11165.1, or an alleged child abuse offense, as
8 described in Section 11165.6, reasonable efforts shall be
9 made to avoid setting that trial, as assigned to a particular
10 prosecuting attorney, on the same day that another trial
11 is set involving the same prosecuting attorney.

12 SEC. 2. Section 1050 of the Penal Code is amended to
13 read:

14 1050. (a) The welfare of the people of the State of
15 California requires that all proceedings in criminal cases
16 shall be set for trial and heard and determined at the
17 earliest possible time. To this end the Legislature finds
18 that the criminal courts are becoming increasingly
19 congested with resulting adverse consequences to the
20 welfare of the people and the defendant. Excessive
21 continuances contribute substantially to this congestion
22 and cause substantial hardship to victims and other
23 witnesses. Continuances also lead to longer periods of
24 presentence confinement for those defendants in custody
25 and the concomitant overcrowding and increased
26 expenses of local jails. It is therefore recognized that the
27 people, the defendant, and the victims and other
28 witnesses have the right to an expeditious disposition, and
29 to that end it shall be the duty of all courts and judicial
30 officers and of all counsel, both for the prosecution and
31 the defense, to expedite these proceedings to the greatest
32 degree that is consistent with the ends of justice. In
33 accordance with this policy, criminal cases shall be given
34 precedence over, and set for trial and heard without
35 regard to the pendency of, any civil matters or
36 proceedings.

37 (b) To continue any hearing in a criminal proceeding,
38 including the trial, (1) a written notice shall be filed and



1 served on all parties to the proceeding at least two court
2 days before the hearing sought to be continued, together
3 with affidavits or declarations detailing specific facts
4 showing that a continuance is necessary; and (2), within
5 two court days of learning that he or she has a conflict in
6 the scheduling of any court hearing, including a trial, an
7 attorney shall notify the calendar clerk of each court
8 involved, in writing, indicating which hearing was set
9 first. A party shall not be deemed to have been served
10 within the meaning of this section until that party actually
11 has received a copy of the documents to be served, unless
12 the party, after receiving actual notice of the request for
13 continuance, waives the right to have the documents
14 served in a timely manner. Regardless of the proponent
15 of the motion, the prosecuting attorney shall notify
16 people's witnesses and the defense attorney shall notify
17 defense's witnesses of the notice of motion, the date of the
18 hearing, and the witnesses' right to be heard by the court.
19 The superior and municipal courts of a county may adopt
20 rules, which shall be consistent, regarding the method of
21 giving the notice or waiver of service required by this
22 subdivision, where a continuance is sought because of a
23 conflict between scheduled appearances in the courts of
24 that county.

25 (c) Notwithstanding subdivision (b), a party may
26 make a motion for a continuance without complying with
27 the requirements of that subdivision. However, unless the
28 moving party shows good cause for the failure to comply
29 with those requirements, the court may impose sanctions
30 as provided in Section 1050.5.

31 (d) When a party makes a motion for a continuance
32 without complying with the requirements of subdivision
33 (b), the court shall hold a hearing on whether there is
34 good cause for the failure to comply with those
35 requirements. At the conclusion of the hearing the court
36 shall make a finding whether good cause has been shown
37 and, if it finds that there is good cause, shall state on the
38 record the facts proved that justify its finding. A
39 statement of the finding and a statement of facts proved
40 shall be entered in the minutes. If the moving party is

1 unable to show good cause for the failure to give notice,
2 the motion for continuance shall not be granted.

3 (e) Continuances shall be granted only upon a
4 showing of good cause. Neither the convenience of the
5 parties nor a stipulation of the parties is in and of itself
6 good cause.

7 (f) At the conclusion of the motion for continuance,
8 the court shall make a finding whether good cause has
9 been shown and, if it finds that there is good cause, shall
10 state on the record the facts proved that justify its finding.
11 A statement of facts proved shall be entered in the
12 minutes.

13 (g) When deciding whether or not good cause for a
14 continuance has been shown, the court shall consider the
15 general convenience and prior commitments of all
16 witnesses, including peace officers. Both the general
17 convenience and prior commitments of each witness also
18 shall be considered in selecting a continuance date if the
19 motion is granted. The facts as to inconvenience or prior
20 commitments may be offered by the witness or by a party
21 to the case.

22 For purposes of this section, “good cause” includes, but
23 is not limited to, those cases involving *murder, as defined*
24 *in subdivision (a) of Section 187*, allegations that a
25 violation of one or more of the sections specified in
26 subdivision (a) of Section 11165.1 or Section 11165.6, or
27 domestic violence as defined in Section 13700, has
28 occurred and the prosecuting attorney assigned to the
29 case has another trial, preliminary hearing, or motion to
30 suppress in progress in that court or another court. A
31 continuance under this paragraph shall be limited to a
32 maximum of 10 additional court days.

33 (h) Upon a showing that the attorney of record at the
34 time of the defendant’s first appearance in the superior
35 court is a Member of the Legislature of this state and that
36 the Legislature is in session or that a legislative interim
37 committee of which the attorney is a duly appointed
38 member is meeting or is to meet within the next seven
39 days, the defendant shall be entitled to a reasonable
40 continuance not to exceed 30 days.



1 (i) A continuance shall be granted only for that period
2 of time shown to be necessary by the evidence considered
3 at the hearing on the motion. Whenever any continuance
4 is granted, the court shall state on the record the facts
5 proved that justify the length of the continuance, and
6 those facts shall be entered in the minutes.

7 (j) Whenever it shall appear that any court may be
8 required, because of the condition of its calendar, to
9 dismiss an action pursuant to Section 1382, the court must
10 immediately notify the Chairman of the Judicial Council.

11 (k) This section shall not apply when the preliminary
12 examination is set on a date less than 10 court days from
13 the date of the defendant's arraignment on the
14 complaint, and the prosecution or the defendant moves
15 to continue the preliminary examination to a date not
16 more than 10 court days from the date of the defendant's
17 arraignment on the complaint.

